

APR 23 2009

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	
)	FINDINGS OF FACT,
PETITIONER,)	CONCLUSIONS OF LAW,
)	RECOMMENDED ORDER
vs.)	AND ORDER
)	
LEANDER GIBSON,)	CAUSE NO. A-1815
)	
RESPONDENT.)	
)	

This matter came for hearing on the 21st day of April, 2009, before Joel F. Green, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Department of Insurance ("Department") was represented by its attorney, Janette Adair. Leander Gibson ("Respondent") was not present and was not represented by counsel. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. The Department presented evidence at the hearing and the matter was taken under advisement. The hearing officer hereby makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. Respondent is a licensed nonresident insurance producer whose registered business address with the Department is Archer Land Title, LLC, 777 Beachway Drive, Suite

200, Indianapolis, IN 46224-7700 and who has served as designated agent for Archer Land Title, LLC since September 16, 2005. (See Ex. 2)

3. Archer Land Title, LLC, held two Nebraska non-resident title insurance producer licenses. The first license was originally issued on September 16, 2005, and was withdrawn by the title insurance agency on June 11, 2008. The second license was originally issued on October 13, 2006, and was placed on inactive status as of February 1, 2008, at the request of Archer Title Land, LLC. (See Ex. 2)

4. Respondent currently holds an appointment with Lawyers Title Insurance Corporation. (See Ex. 2)

5. On or about March 12, 2009, a Petition and Notice of Hearing in this matter was served upon Respondent by mailing the same to his registered business address via certified mail, return receipt requested. On or about March 27, 2009, the domestic return receipt card attached to the certified letter was returned to the Department by the United States Postal Service, evidencing delivery of the Petition and Notice of Hearing in this matter to Respondent on March 20, 2009. (See Ex. 1)

6. On or about November 14, 2008, Reva Vandevoorde ("Vandevoorde"), Administrator of the Market Conduct Division of the Nebraska Department of Insurance, submitted a written inquiry, via certified mail, return receipt requested, to Respondent at his registered business address requesting Respondent to answer various questions regarding the bankruptcy filing of Archer Land Title, LLC. The investigatory letter specifically stated, "[f]ailure to respond to this written inquiry within fifteen (15) working days of receipt is a violation of the Nebraska Unfair Insurance Trade Practices Act and may result in an administrative action directed against your insurance producer license." (See Ex. 3)

7. On or about November 24, 2008, the domestic return receipt card attached to the written inquiry dated November 14, 2008, was returned to the Department by the United States Postal Service, evidencing delivery of the written inquiry to Respondent on November 19, 2008. (See Ex. 3)

8. As of April 20, 2009, Respondent failed to provide a response to the written inquiry dated November 14, 2008. (See Ex. 3)

DISCUSSION

In this matter, the Department provided evidence of the submission of the Petition and Notice of Hearing to Respondent at his registered business address by certified letter, return receipt requested, on or about March 12, 2009. The evidence offered also demonstrates that the Petition and Notice of Hearing was delivered to Respondent at his registered business address on March 20, 2009, thereby satisfying the notice of hearing requirements set forth by the Nebraska Administrative Procedure Act, specifically NEB. REV. STAT. § 84-913, as well as 210 NEB. ADMIN. R. & REG. 26-002.

The Department produced sufficient evidence of its attempt to contact Respondent by mailing a written investigative inquiry to Respondent at his registered business address. The evidence strongly suggests that on or about November 19, 2008, Respondent received the written investigative inquiry submitted by Vandevoorde thereby demonstrating Respondent was aware of, or should have been aware of, the investigatory letter and his obligation to respond.

The Unfair Insurance Trade Practices Act, NEB. REV. STAT. §§ 44-1521 to 44-1535, provides that a failure by a licensed producer, upon receipt of written inquiry from the Department, to respond to such inquiry within fifteen (15) working days shall be an unfair trade

practice which may result in a monetary fine and/or the suspension or revocation of an insurance producer license. Additionally, the Insurance Producer Licensing Act provides that an insurance producer license may be revoked or suspended and/or impose a monetary fine for having been found to have violated any insurance law. The Department has presented ample evidence demonstrating Respondent was aware of, or should have been aware of, the investigatory letter and that Respondent failed to provide a response to the written inquiry.

In light of the circumstances of this case, revocation of Respondent's license is proper to ensure Respondent transacts no further insurance business in the State of Nebraska.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of insurance producers to sell insurance in the State of Nebraska pursuant to NEB. REV. STAT. §§ 44-101.01 and 44-4047 ET SEQ.
2. The Department has personal jurisdiction over Respondents.
3. NEB. REV. STAT. § 44-4059(1)(b) provides that the Director may revoke or suspend a producer's license and/or impose a fine upon a licensee for a producer to violate any insurance law or any rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director.
4. Respondent's failure to provide a response to the written inquiry of Market Conduct Administrator Reva Vandevoorde dated November 14, 2008, within fifteen working days is an unfair trade practice and violation of an insurance law and regulation, specifically NEB. REV. STAT. § 44-1525(11).


5. Respondent, by his actions, violated NEB. REV. STAT. §§ 44-1525(11), 44-4059(1)(b).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Respondent's insurance producer license in the State of Nebraska be revoked. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until all provisions of this order have been complied with.

Dated this 23rd day of April, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


JOEL F. GREEN
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of the Department in the matter of State of Nebraska Department of Insurance vs. Leander Gibson, Cause No. A-1815.

Dated this 23rd day of April, 2009.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


ANN M. FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Respondent by mailing a copy to Respondent at Archer Land Title, LLC, 777 Beachway Drive, Suite 200, Indianapolis, IN 46224-7700, by certified mail, return receipt requested, on this 23rd day of April, 2009.

Tracy A. Luhn